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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR-07-00503 RMW
11)
Plaintiff,)
12)
vs.) DECLARATION OF COUNSEL IN
13) SUPPORT OF DEFENDANT'S NOTICE
ARQUIMEDES MENDOZA-SORIANO,) AND MOTION TO CONTINUE
14) SENTENCING HEARING
Defendant.)
15 _____)

16 I., Cynthia C. Lie, hereby declare as follows:

17 1. The Federal Public Defender was appointed to represent defendant Arquimedes
18 Mendoza-Soriano in the above-captioned matter at his initial appearance July 24, 2007.

19 2. I was first assigned to represent defendant Arquimedes Mendoza-Soriano
20 following the completion of the Presentence Report and the departure from the Office of the
21 Federal Public Defender of his prior counsel.

22 3. On reviewing the Presentence Report, I concluded that further fact investigation
23 regarding Mr. Mendoza's prior felony convictions would be necessary in an effort to mitigate the
24 impact of those prior convictions on his sentence in the instant case. The Court, government
25 counsel and the Probation Office have accommodated two continuances of the sentencing
26

1 hearing, originally set for November 13, 2007 as the defense conducted its investigation.

2 4. The defense has obtained documents relating to those convictions, interviewed
3 relevant witnesses, and conducted other investigation in order to effectively prepare for
4 sentencing. As the defense sentencing memorandum reflects, it is my professional opinion that
5 Mr. Mendoza's prior conviction for Rape of an Intoxicated Person in violation of California
6 Penal Code Section 261(a)(3), was constitutionally deficient. Since filing the memorandum, the
7 defense has obtained further information that would tend to support this position.

8 5. Although a successful habeas petition as to only that one conviction would not
9 alter the offense level calculation, I believe that it would result in a significant reduction in Mr.
10 Mendoza's Criminal History Category, from Category V to Category III, resulting in a guideline
11 range of 46-57 months, in lieu of the current range of 70-87 months. It would also directly
12 impact one rationale advanced by the Probation Office for its mid-range sentencing
13 recommendation.

14 6. On January 23, 2008, I met and conferred telephonically with government counsel
15 regarding the possibility of a continuance of the sentencing hearing for the purpose of allowing
16 Mr. Mendoza to bring a collateral challenge to that prior conviction in the San Joaquin Superior
17 Court. Although both parties remain concerned about how long the state court would require to
18 rule on such a petition, the government did indicate that it would not be opposed to a brief
19 continuance to permit the defense to begin the process and determine how much additional time
20 would be required to complete the habeas process. The government declined to speculate
21 whether the outcome of such a petition might affect its sentencing recommendation.

22 7. On January 25, 2008, I met with Mr. Mendoza, who indicated that he also would
23 authorize me to seek a continuance for this purpose. I left a message that day for government
24 counsel, the Probation Office and the Court indicating that I would be bringing the instant motion
25 to continue.

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I declare under penalty of perjury that the foregoing facts are true and correct and of my personal knowledge

Executed this 25th day of January 2008 in San Jose, California.

s/_____
CYNTHIA C. LIE
Assistant Federal Public Defender